

Remarks:

Reconsideration of the application is requested.

Claims 1-16 and 19-44 are now in the application. Claims 16, 28-29, 35 and 38-39 have been amended. 1-15 and 36-37 have been withdrawn from consideration. Claims 40-44 have been added.

In item 2 on page 2 of the above-identified Office action, the specification has been objected to as failing to provide proper antecedent basis for the claimed subject matter.

More specifically, the Examiner has stated that the recitations of "tensioning system," "tensioning posts," "a plurality of tensioners" and "fastening locations" in claims 16, 35, 38 and 39 are not supported by the language of the specification. The Examiner has further stated that the recitation of the wire lath defining an "unsupported fence bottom" is not supported by the original disclosure.

The recitations of "tensioning system," "tensioning posts," "a plurality of tensioners" and "fastening locations" are supported respectively by the ratcheting system, ratcheting posts, a plurality of ratchets, and holes formed in the ratcheting post for fastening the ratchets, as described in the specification. Please note that the claim language is not

required to use the exact terms used in the description. Nevertheless, the specification has been amended in various locations to use the language mentioned by the Examiner. For example, the term "tensioning system" is now mentioned in the abstract as amended; the term "tensioning posts" is now mentioned on page 13; line 23 of the specification as amended, the term "tensioners" is now mentioned on page 14, lines 1-2 of the specification as amended; and the term "fastening locations" is now mentioned on page 13, line 27 of the specification as amended. It certainly cannot be denied that, for example, ratchets provide tension or the holes in the posts are locations for fastening the ratchets or tensioners.

The recitation of the wire lath defining an "unsupported fence bottom" is clearly shown in the drawings (see, for example, Figs. 5 and 6, the bottom of the fence does not touch the ground) and can be derived from the description of the invention. The description of Figs. 5 and 6 has been amended to specifically refer to that which is shown.

In deference to the requirement in item 3 on page 2 of the Office action, the term MAX-FLEX is now accompanied by the word "company" since it refers to a manufacturer of the product.

In item 5 on page 3 of the above-identified Office action, the drawings have been objected to under 37 CFR 1.83(a) as not

showing every feature of the invention specified in the claims.

More specifically, the Examiner has stated that the wires being cut (or having free ends) between the end fence posts and the ratcheting posts compressing the wire lathe in claims 16, 28, 35, 36, 38 and 39 must be shown or the feature(s) cancelled from the claim(s).

Fig. 1B has been added to show the fence after the high-tension tensile wires have been cut between the end fence posts and the ratcheting posts. The specification has been amended accordingly. The second paragraph on page 15 of the original specification describes the cutting of the wires.

In deference to the requirement in item 6 on pages 3-4 of the Office action, claims 35 and 39 will be canceled or amended upon allowance of claims 16 and 38, respectively.

In item 8 on page 4 of the above-identified Office action, claims 31 and 33 have been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More specifically, the Examiner has stated that recitation of the wire lath defining an "unsupported fence bottom" constitutes new matter.

As already discussed above, the recitation of the wire lath defining an "unsupported fence bottom" is clearly shown in the drawings (see, for example, Figs. 5 and 6, the bottom of the fence does not touch the ground) and can be derived from the description of the invention. It is the result of the method steps of the invention. This recitation, therefore, does not constitute new matter.

In item 9 on pages 4-5 of the above-identified Office action, claims 36-39 have been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More specifically, the Examiner has stated that recitation of "two tensioning posts", "a plurality of tensioners", and "a tensioning system" is not supported by the original disclosure and thus constitutes new matter.

An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." In re Gosteli, 872 F.2d 1008, 1012 (Fed. Cir. 1989). The fundamental inquiry is whether a claim defines an invention that is clearly conveyed to those skilled in the art at the time the application was filed. The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. See MPEP 2163.02.

As already described above, the recitations of "tensioning system," "tensioning posts," "a plurality of tensioners" and "fastening locations" are supported respectively by the ratcheting system, ratcheting posts, a plurality of ratchets, and holes formed in the ratcheting post for fastening the ratchets, as described in the original description.

In item 11 on page 5 of the above-identified Office action, claim 29 has been rejected as being indefinite under 35 U.S.C. § 112, second paragraph.

More specifically, the Examiner has stated that the limitation "said fence coating" in claim 29 does not have sufficient

antecedent basis. Claim 29 has been amended to depend on claim 32.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, first and second paragraphs. Should the Examiner find any further objectionable items, counsel would appreciate a telephone call during which the matter may be resolved. The above-noted changes to the claims are provided solely for cosmetic and/or clarificatory reasons. The changes are neither provided for overcoming the prior art nor do they narrow the scope of the claims for any reason related to the statutory requirements for a patent.

In item 14 on pages 5-10 of the above-mentioned Office action, claims 16 and 19-39 have been rejected as being as being unpatentable over Bunch (US Pat. No. 355,135) in view of Miller et al. (US Pat. No. 4,031,285) and further in view of Waggoner (US Pat. No. 6,355,333) under 35 U.S.C. § 103(a).

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and the claims have, therefore, not been amended to overcome the references. However, the language of the claims has been slightly amended to even more clearly define the invention of the instant application.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claims 16 and 35 call for, inter alia:

a plurality of high-tension tensile wires running between said temporary ratcheting posts and secured to said plurality of fence posts, at least one end of each of said high-tension tensile wires being connected to a respective one of said ratchets, said high-tension tensile wires being tensioned to a pre-determined tension by actuating said ratchets;

a wire lath secured to said plurality of tensioned high-tension tensile wires and said fence posts; and

said tensioned high-tension tensile wires being cut between said end fence posts and said ratcheting posts compressing said wire lath. (Emphasis added.)

Claims 38 and 39 call for, inter alia:

a plurality of high-tension tensile wires running between said tensioning posts and secured to said plurality of fence posts, at least one end of each of said high-tension tensile wires being connected to a respective one of said tensioners, said high-tension tensile wires being tensioned to a pre-determined tension by actuating said tensioners;

a wire lath secured to said plurality of tensioned high-tension tensile wires and said fence posts; and

said tensioned high-tension tensile wires being cut between said end fence posts and said tensioning posts compressing said wire lath. (Emphasis added.)

Claim 28 calls for, inter alia:

a plurality of high-tension tensile wires secured to said plurality of fence posts, said high-tension tensile wires being tensioned to a pre-determined tension and having free ends;

a wire lath secured to said plurality of tensioned high-tension tensile wires and said fence posts and being

compressed by said tensioned high-tension tensile wires.
(Emphasis added.)

An important concept of the invention of the instant application is that the high-tension tensile wires are tensioned to pre-determined tension, wire lath and fence coating material are then applied to the tensioned high-tension tensile wires, and finally the tensioned high-tension tensile wires are cut between the end fence post and the tensioning post. Therefore, in the claimed product, the wire lath and the fence coating material is compressed to create a post-tension condition in the fence.

This concept is not disclosed by any of the cited references. Bunch discloses a wire stretcher for securely holding the wires while the wires are being fastened to the fence posts by staples. The stretchers disclosed in Bunch can at most be compared with the tensioners as disclosed in the invention of the instant application. In addition, the wires are not cut in Bunch as alleged by the Examiner (see page 6, lines 11-12 of the Office action).

Miller et al. disclose a slab 12 of structural material with elongated reinforcing steel bands or ribbons 22 embedded therein (see Fig. 1). Those reinforcing steel bands or ribbons 22 serve to resist compression, flexure and deflection forces (see column 3, lines 16-17). In contrast, the high-

tension tensile wires in the invention of the instant application are used to create compression in the fence. Nowhere do Miller et al. disclose that the steel bands or ribbons 22 are tensioned to a pre-determined tension before being embedded in the slab. The reason that the bands 22, 22' and 22'' are cut as shown in Fig. 3 of Miller et al. is to insert a transverse band 31, not to create compression.

In Waggoner et al., although the wires 14 are shown to be taut in Fig. 1 as stated by the Examiner (see item 17 on page 11 of the Office action), they are not tensioned to a pre-determined tension by actuating the tensioners as recited in the claims of the instant application. Furthermore, since in Waggoner et al. the wire lath is not secured to the tensioned high-tension tensile wires but is applied to the barrier sheet (see item 18 on page 11 of the Office action), compression cannot be created in the wire lath by cutting the tensioned high-tension tensile wires.

Clearly, none of the cited references disclose the features in the claimed product that the high-tension tensile wires are tensioned to pre-determined tension, wire lath is on the tensioned high-tension tensile wires and the tensioned high-tension tensile wires are cut so that the wire lath is compressed, as recited in claims 16, 28, 35, 38 and 39 of the instant application.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 16, 28, 35, 38 and 39. Claims 16, 28, 35, 38 and 39 are, therefore, believed to be patentable over the art and since claims 19-27 and 29-34 are ultimately dependent on claims 16 or 28, they are believed to be patentable as well.

In item 15 on pages 10-11 of the above-mentioned Office action, claim 30 has been rejected as being as being unpatentable over the combination of Bunch, Miller et al. and Waggoner and further in view of Larsen (US Pat. No. 1,030,411) under 35 U.S.C. § 103(a).

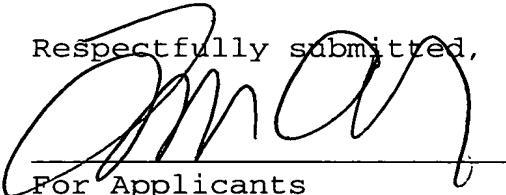
As discussed above, claim 16 is believed to be patentable over the art. Since claim 30 is dependent on claim 16, it is believed to be patentable as well.

Claims 40-44 have been added. Since claims 16, 28, 35, 38, and 39 are believed to be patentable as discussed above and claims 40-44 are dependent on claims 16, 28, 35, 38, and 39, respectively, they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 16 and 19-44 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate a telephone call so that, if possible, patentable language can be worked out. In the alternative, the entry of the amendment is requested as it is believed to place the application in better condition for appeal, without requiring extension of the field of search.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$55.00 (small entity) in accordance with Section 1.17 is enclosed herewith. The fee in the amount of \$45.00 (small entity) for five added claims in excess of twenty is enclosed herewith. Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,

For Applicants

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September 9, 2003
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